

# U.S. Customs Service

## *Treasury Decisions*

19 CFR Parts 10, 163 and 178

(T.D. 02-59)

RIN 1515-AC78

### DUTY-FREE TREATMENT FOR CERTAIN BEVERAGES MADE WITH CARIBBEAN RUM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with minor revisions, the interim rule amending the Customs Regulations that was published in the Federal Register on February 9, 2001, as T.D. 01-17. The interim rule implemented a change to the Caribbean Basin Economic Recovery Act, also known as the Caribbean Basin Initiative (CBI), that enabled certain beverages to obtain duty-free entry under specified conditions when the beverages were processed in the territory of Canada from rum that was the growth, product or manufacture either of a CBI beneficiary country or of the U.S. Virgin Islands. This final rule adopts the certification and supporting documentation requirements set forth in the interim rule that were necessary to establish compliance with the statutory law, thereby ensuring that the rum beverages were properly entitled to duty-free entry under the CBI.

EFFECTIVE DATE: Final rule effective on October 9, 2002. This final rule is applicable to products that are entered or withdrawn from warehouse for consumption on or after October 4, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Wallio, Office of Field Operations, (202-927-9704).

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

The Caribbean Basin Economic Recovery Act (19 U.S.C. 2701-2707) (CBERA) establishes an economic recovery program for nations of the Caribbean and Central America. Under the CBERA, also referred to as

the Caribbean Basin Initiative (CBI), the President is authorized to proclaim duty-free treatment for all eligible articles of a beneficiary country (19 U.S.C. 2701).

A beneficiary country under the CBI refers to any country listed in 19 U.S.C. 2702(b) with respect to which there is in effect a proclamation by the President designating the country as a beneficiary country for purposes of the CBI (19 U.S.C. 2702(a)(1)(A)). A rule of origin specifies under what conditions an article will be considered to be a product of a beneficiary country—in brief, the article must be wholly the growth, product or manufacture of a beneficiary country, or must be a new or different article of commerce that has been grown, produced, or manufactured in the beneficiary country (19 U.S.C. 2703(a)).

Sections 10.191 through 10.198b of the Customs Regulations (19 CFR 10.191–10.198b) currently implement the duty-free aspects of the CBI.

In pertinent part, in order to be entitled to duty-free treatment under the CBI, an article otherwise eligible for such treatment must be imported directly from a beneficiary country into the customs territory of the United States (19 U.S.C. 2703(a)(1)(A); 19 CFR 10.193).

Before passage of the United States-Caribbean Basin Trade Partnership Act (Title II of Pub. L. 106–200, 114 Stat. 275, enacted on May 18, 2000) (CBTPA), in the case of rum produced in a beneficiary country and then imported into Canada for processing into a rum beverage, the beverage would not have been eligible for duty-free treatment under the CBI because it was not imported directly from a beneficiary country into the United States. At the same time, the beverage would also have been ineligible for duty-free treatment under the North American Free Trade Agreement Implementation Act (19 U.S.C. 3301 *et seq.*) (NAFTA) because the processing it undergoes in Canada would not be sufficient to qualify it as a NAFTA originating good (19 U.S.C. 3332; General Note 12, Harmonized Tariff Schedule of the United States (HTSUS); 19 CFR 181.131; and the appendix to 19 CFR part 181).

BEVERAGES MADE IN CANADA WITH CARIBBEAN RUM; AMENDMENT OF  
CBERA BY UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

Section 212 of the CBTPA added a new paragraph (a)(6) to section 213(a) of the CBERA (19 U.S.C. 2703(a)(6)), in order to provide for duty-free entry under specified conditions for certain beverages that are produced in the territory of Canada from rum that is the growth, product, or manufacture either of a beneficiary country under the CBI or of the U.S. Virgin Islands.

Specifically, under 19 U.S.C. 2703(a)(6), a beverage that is imported directly into the customs territory of the United States from the territory of Canada and that is classifiable under subheading 2208.90 or 2208.40, Harmonized Tariff Schedule of the United States (HTSUS), is entitled to duty-free entry under the CBERA if such beverage is produced in the territory of Canada from rum, provided that the rum: (1) Is the growth, product, or manufacture of a beneficiary country or of the U.S. Virgin Islands; (2) is imported directly into the territory of Canada

from a beneficiary country or from the U.S. Virgin Islands; and (3) accounts for at least 90 percent by volume of the alcoholic content of the beverage.

Accordingly, by a document published in the Federal Register (66 FR 9643) on February 9, 2001, as T.D. 01-17, Customs issued an interim rule setting forth a new § 10.199 in order to implement the provision allowing for duty-free admission for certain beverages produced in the territory of Canada from Caribbean rum. Section 10.199 prescribed the certification and supporting documentary requirements and record-keeping responsibilities that must be observed in order to afford duty-free admission for those beverages that properly qualify for such treatment, and to otherwise ensure compliance with the requirements of the statutory law.

In addition, the Interim (a)(1)(A) List set forth as an Appendix to part 163, Customs Regulations (19 CFR part 163, Appendix), that lists the records required for the entry of merchandise, was revised to add a reference to the requirement in § 10.199 that an importer possess those documents that are necessary for the duty-free entry of the beverages, including the declaration of the Canadian processor and related supporting information. Also, part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, was revised to include an appropriate reference to the documentary requirements in § 10.199.

#### DISCUSSION OF COMMENT

One comment was received in response to the interim rule. The commenter requested clarification as to the effective date for according duty-free treatment to those imported beverages that were made with Caribbean rum under 19 U.S.C. 2703(a)(6). The interim rule stated that it would be applicable to products entered or withdrawn from warehouse for consumption on or after February 9, 2001. However, the commenter asserted that Presidential Proclamation No. 7351 specified an effective date of October 2, 2000.

#### CUSTOMS RESPONSE

Presidential Proclamation No. 7351 of October 2, 2000 (65 FR 59329) dealt with the implementation of the amendments made to the CBERA by the CBTPA. While effective on the date signed (October 2, 2000), the Proclamation also made clear that modifications to the HTSUS were necessary to implement any preferential tariff treatment afforded by the amendments; and that these modifications were set forth in an Annex to the Proclamation that would be effective on the date announced by the United States Trade Representative (USTR) in a notice to be published in the Federal Register. This Annex included HTSUS subheading 9817.22.05, which was the provision necessary to implement the statutory amendment authorizing duty-free treatment for the rum beverages (19 U.S.C. 2703(a)(6)).

The notice setting forth the Annex was published in the Federal Register on October 4, 2000, and, in pertinent part, the notice stated that it was effective with respect to goods entered, or withdrawn from warehouse, for consumption on or after this date of publication (65 FR 59329, at 59332–59333).

Therefore, as already indicated above under the “EFFECTIVE DATES” caption, this final rule document will apply to goods entered, or withdrawn from warehouse, for consumption on or after October 4, 2000. It is observed in this regard, however, that because the interim rule in this matter was not published in the Federal Register until February 9, 2001, Customs, prior to this time, did not accept duty-free entries for rum beverages subject to 19 U.S.C. 2703(a)(6).

Consequently, for entries of eligible rum beverages that were made on or after October 4, 2000, and prior to February 9, 2001, importers or their agents may make use of either the Supplemental Information Letter or Post Entry Amendment procedure prior to liquidation of the entry, or they may file a timely protest under 19 U.S.C. 1514, to obtain duty-free treatment for these qualifying beverages. Such claims must be made at the port where the original entry was filed.

#### RELEVANT HTSUS SUBHEADINGS NOT APPLICABLE TO LIQUEURS

It is noted that the beverages entitled to duty-free treatment under 19 U.S.C. 2703(a)(6) are specifically described as spirituous beverages and liqueurs classifiable under HTSUS subheading 2208.40 or 2208.90. However, in further consideration of the interim rule, Customs noted that neither of these HTSUS subheadings in fact applies to liqueurs. Rather, liqueurs are provided for in HTSUS subheading 2208.70 which is not included within section 2703(a)(6). Thus, liqueurs are not entitled to duty-free treatment under this statutory enactment. For this reason, Customs is deleting any reference to liqueurs set forth in interim § 10.199 in this final rule. For the sake of editorial clarity and convenience, § 10.199, as revised, is republished below in its entirety, together with a related revision to the (a)(1)(A) List in the Appendix to part 163.

#### CONCLUSION

After careful consideration of the comment received and further review of the matter, Customs has concluded that the interim rule amending parts 10, 163 and 178, Customs Regulations (19 CFR parts 10, 163 and 178) that was published in the Federal Register (66 FR 9643) on February 9, 2001, as T.D. 01–17, should be adopted as a final rule with the modification discussed above.

#### INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS, THE REGULATORY FLEXIBILITY ACT, AND EXECUTIVE ORDER 12866

Pursuant to the provisions of 5 U.S.C. 553(b)(B), public notice is inapplicable to this final rule because it was determined that good cause existed for dispensing with prior public notice and comment procedures. To this end, the final rule affords a preferential tariff benefit to the im-

porting public; it reflects, and provides a necessary and reasonable means for enforcing, statutory requirements that are already in effect; and it closely parallels existing regulatory provisions that implement similar trade preference programs. Also, for these same reasons, there is no need for a delayed effective date under 5 U.S.C. 553(d). Because this document is not subject to the requirements of 5 U.S.C. 553, as noted, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Nor does this document meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

#### PAPERWORK REDUCTION ACT

The collection of information involved in this final rule document has already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Number 1515–0194 (Documentation requirements for articles entered under various special tariff treatment provisions). This collection includes a claim for duty-free entry of eligible articles under the Caribbean Basin Initiative. This rule does not present any substantive changes to the existing approved information collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

#### LIST OF SUBJECTS

##### 19 CFR Part 10

Customs duties and inspection, Exports, Foreign relations, Imports, International traffic, Preference programs, Reporting and recordkeeping requirements, Shipments, Trade agreements (Caribbean Basin Initiative, Generalized System of Preferences, U.S.-Canada Free Trade Agreement, etc.).

##### 19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

##### 19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

#### AMENDMENTS TO THE REGULATIONS

Accordingly, the interim rule amending 19 CFR parts 10, 163, and 178 which was published at 66 FR 9643, February 9, 2001, is adopted as a final rule with the following changes:

PART 10—ARTICLES CONDITIONALLY FREE,  
SUBJECT TO A REDUCED RATE, ETC.

1. The general and the relevant specific sectional authority for part 10 continue to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

\* \* \* \* \*

Sections 10.191 through 10.199 also issued under 19 U.S.C. 2701 *et seq.*;

\* \* \* \* \*

2. Section 10.199 is revised to read as follows:

**§ 10.199 Duty-free entry for certain beverages produced in Canada from Caribbean rum.**

(a) *General.* A spirituous beverage that is imported directly from the territory of Canada and that is classifiable under subheading 2208.40 or 2208.90, Harmonized Tariff Schedule of the United States (HTSUS), will be entitled, upon entry or withdrawal from warehouse for consumption, to duty-free treatment under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)), also known as the Caribbean Basin Initiative (CBI), if the spirituous beverage has been produced in the territory of Canada from rum, provided that the rum:

- (1) Is the growth, product, or manufacture either of a beneficiary country or of the U.S. Virgin Islands;
- (2) Was imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands; and
- (3) Accounts for at least 90 percent of the alcoholic content by volume of the spirituous beverage.

(b) *Claim for exemption from duty under CBI.* A claim for an exemption from duty for a spirituous beverage under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)) may be made by entering such beverage under subheading 9817.22.05, HTSUS, on the entry summary document or its electronic equivalent. In order to claim the exemption, the importer must have the records described in paragraphs (d), (e), (f) and (g) of this section so that, upon Customs request, the importer can establish that:

- (1) The rum used to produce the beverage is the growth, product or manufacture either of a beneficiary country or of the U.S. Virgin Islands;
- (2) The rum was shipped directly from a beneficiary country or from the U.S. Virgin Islands to Canada;
- (3) The beverage was produced in Canada;
- (4) The rum accounts for at least 90% of the alcohol content of the beverage; and
- (5) The beverage was shipped directly from Canada to the United States.

(c) *Imported directly.* For a spirituous beverage imported from Canada to qualify for duty-free entry under the CBI, the spirituous beverage must be imported directly into the customs territory of the United States from Canada; and the rum used in its production must have been imported directly into the territory of Canada either from a beneficiary country or from the U.S. Virgin Islands.

(1) “Imported directly” into the customs territory of the United States from Canada means:

(i) Direct shipment from the territory of Canada to the U.S. without passing through the territory of any other country; or

(ii) If the shipment is from the territory of Canada to the U.S. through the territory of any other country, the spirituous beverages do not enter into the commerce of any other country while en route to the U.S.; or

(iii) If the shipment is from the territory of Canada to the U.S. through the territory of another country, and the invoices and other documents do not show the U.S. as the final destination, the spirituous beverages in the shipment are imported directly only if they:

(A) Remained under the control of the customs authority of the intermediate country;

(B) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter’s sales agent; and

(C) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the products in good condition.

(2) “Imported directly” from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada means:

(i) Direct shipment from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada without passing through the territory of any non-beneficiary country; or

(ii) If the shipment is from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada through the territory of any non-beneficiary-country, the rum does not enter into the commerce of any non-beneficiary country while en route to Canada; or

(iii) If the shipment is from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada through the territory of any non-beneficiary country, the rum in the shipment is imported directly into the territory of Canada only if it:

(A) Remained under the control of the customs authority of the intermediate country;

(B) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail; and

(C) Was not subjected to operations in the intermediate country other than loading and unloading, and other activities necessary to preserve the product in good condition.

(d) *Evidence of direct shipment.*

(1) *Spirituous beverages imported from Canada.* The importer must be prepared to provide to the port director, if requested, documentary evidence that the spirituous beverages were imported directly from the territory of Canada, as described in paragraph (c)(1) of this section. This evidence may include documents such as a bill of lading, invoice, air waybill, freight waybill, or cargo manifest. Any evidence of the direct shipment of these spirituous beverages from Canada into the U.S. may be subject to such verification as deemed necessary by the port director.

(2) *Rum imported into Canada from beneficiary country or U.S. Virgin Islands.* The importer must be prepared to provide to the port director, if requested, evidence that the rum used in producing the spirituous beverages was imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands, as described in paragraph (c)(2) of this section. This evidence may include documents such as a Canadian customs entry, Canadian customs invoice, Canadian customs manifest, cargo manifest, bill of lading, landing certificate, airway bill, or freight waybill. Any evidence of the direct shipment of the rum from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada for use there in producing the spirituous beverages may be subject to such verification as deemed necessary by the port director.

(e) *Origin of rum used in production of the spirituous beverage.*

(1) *Origin criteria.* In order for a spirituous beverage covered by this section to be entitled to duty-free entry under the CBI, the rum used in producing the spirituous beverage in the territory of Canada must be wholly the growth, product, or manufacture either of a beneficiary country under the CBI or of the U.S. Virgin Islands, or must constitute a new or different article of commerce that was produced or manufactured in a beneficiary country or in the U.S. Virgin Islands. Such rum will not be considered to have been grown, produced, or manufactured in a beneficiary country or in the U.S. Virgin Islands by virtue of having merely undergone blending, combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the product.

(2) *Evidence of origin of rum.* (i) *Declaration.* The importer must be prepared to submit directly to the port director, if requested, a declaration prepared and signed by the person who produced or manufactured the rum, affirming that the rum is the growth, product or manufacture of a beneficiary country or of the U.S. Virgin Islands. While no particular form is prescribed for the declaration, it must include all pertinent information concerning the processing operations by which the rum was produced or manufactured, the address of the producer or manufacturer, the title of the party signing the declaration, and the date it is signed.

(ii) *Records supporting declaration.* The supporting records, including those production records, that are necessary for the preparation of the declaration must also be available for submission to the port director if requested. The declaration and any supporting evidence as to the ori-



gin of the rum may be subject to such verification as deemed necessary by the port director.

(f) *Canadian processor declaration; supporting documentation.* (1) *Canadian processor declaration.* The importer must be prepared to submit directly to the port director, if requested, a declaration prepared by the person who produced the spirituous beverage(s) in Canada, setting forth all pertinent information concerning the production of the beverages. The declaration will be in substantially the following form:

I, \_\_\_\_\_ declare that the spirituous beverages here specified are the products that were produced by me (us), as described below, with the use of rum that was received by me (us); that the rum used in producing the beverages was received by me (us) on \_\_\_\_\_ (date), from \_\_\_\_\_ (name and address of owner or exporter in the beneficiary country or in the U.S. Virgin Islands, as applicable); and that such rum accounts for at least 90 percent of the alcoholic content by volume, as shown below, of each spirituous beverage so produced.

<i>Marks and numbers</i>	<i>Description of products and of processing</i>	<i>Alcoholic content of products; alcoholic content (%) attributable to rum</i>
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

The production records must establish, for each lot of beverage produced, the quantity of rum the growth, product or manufacture of a CBI beneficiary country or of the U.S. Virgin Islands under 19 U.S.C. 2703(a)(6) that is used in producing the finished beverage; the alcoholic content by volume of the finished beverage; and the alcoholic content by volume of the finished beverage, expressed as a percentage, that is attributable to the qualifying rum. If rum from two or more qualifying sources (*e.g.*, rum the growth, product or manufacture of a CBI beneficiary country or of the U.S. Virgin Islands and other rum the growth, product or manufacture of another CBI country) are used in processing the beverage, the alcoholic content requirement may be met by aggregating the alcoholic content of the finished beverage that is attributable to rum from each of the qualifying sources used in processing the finished beverage, as reflected in the production records.

Date \_\_\_\_\_  
 Address \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Title \_\_\_\_\_

(2) *Availability of supporting documents.* The information, including any supporting documents and records, necessary for the preparation of the declaration, as described in paragraph (f)(1) of this section, must be available for submission to the port director, if requested. The declaration and any supporting evidence may be subject to such verification as deemed necessary by the port director. The specific documentary evidence necessary to support the declaration consists of those documents and records which satisfactorily establish:

(i) The receipt of the rum by the Canadian processor, including the date of receipt and the name and address of the party from whom the

rum was received (the owner or exporter in the beneficiary country or the U.S. Virgin Islands); and

(ii) For each lot of beverage produced and included in the declaration, the specific identification of the production lot(s) involved; the quantity of qualifying rum that is used in producing the finished beverage, including a description of the processing and of the finished products; the alcoholic content by volume of the finished beverage; and the alcoholic content by volume of the finished beverage, expressed as a percentage, that is attributable to the qualifying rum.

(g) *Importer system for review of necessary recordkeeping.* The importer will establish and implement a system of internal controls which demonstrate that reasonable care was exercised in its claim for duty-free treatment under the CBI. These controls should include tests to assure the accuracy and availability of records that establish:

- (1) The origin of the rum;
- (2) The direct shipment of the rum from a beneficiary country or from the U.S. Virgin Islands to Canada;
- (3) The alcohol content of the finished beverage imported from Canada; and
- (4) The direct shipment of the finished beverage from Canada to the United States.

(h) *Submission of documents to Customs.* The importer must be prepared to submit directly to the port director, if requested, those documents and/or supporting records as described in paragraphs (d), (e) and (f) of this section, for a period of 5 years from the date of entry of the related spirituous beverages under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)), as provided in § 163.4(a) of this chapter. If requested, the importer must submit such documents and/or supporting records to the port director within 60 calendar days of the date of the request or such additional period as the port director may allow for good cause shown.

#### PART 163—RECORDKEEPING

1. The authority citation for part 163 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. The Appendix to part 163 is amended by revising the listing for § 10.199 under section IV to read as follows:

#### APPENDIX TO PART 163—INTERIM (a)(1)(A) LIST

\* \* \* \* \*

IV. \* \* \*

**§ 10.199 Documents, etc. required for duty-free entry of  
spirituous beverages produced in Canada from CBI rum,  
declaration of Canadian processor (plus supporting  
information)**

\* \* \* \* \*

ROBERT C. BONNER,  
*Commissioner of Customs.*

Approved: October 3, 2002.

TIMOTHY E. SKUD,

*Deputy Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 9, 2002 67 FR 62880]

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(T.D. 02-61)

**RECORDATION OF TRADE NAME: "ORTHOTEC"**

**ACTION:** Notice of Application for Recordation of Trade Name.

**SUMMARY:** Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ORTHOTEC". The trade name is owned by Orthotec, LLC, a Delaware Limited Liability Company organized and created in the State of Delaware, 9595 Wilshire Blvd., Suite 502, Beverly Hills, California 90212.

The application states that the trade name is used on medical devices, more specifically, surgical implants made of stainless steel or titanium for spinal surgery, comprised of hooks, bolts, screws, rods, instruments and containers to hold the goods and instruments.

The merchandise is manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

**DATE:** Comments must be received or on before October 23, 2002.

**ADDRESS:** Written comments should be addressed to U.S. Customs Service, Attention: Office of Regulations & Rulings, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Savoy, Intellectual Property Rights Branch, 1300, Pennsylvania Avenue, NW., Washington, D.C. 20229, (202) 572-8710).

Dated: October 9, 2002.

JOANNE ROMAN STUMP  
*Chief,*  
*Intellectual Property Rights Branch.*